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City of Wilkes-Barre
Police Officer Twerdy, and
Police Officer John Doe

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANGELA VELASQUEZ,
Plaintiff

v.

CITY OF WILKES-BARRE, POLICE
OFFICER TWERDY, POLICE OFFICER
JOHN DOE, UNIQUE L. JONES,
TERDELL WEES, and PENNSYLVANIA
FINANCIAL RESPONSIBILITY
ASSIGNED CLAIMS PLAN,
Defendants

CIVIL ACTION – LAW
JURY TRIAL DEMANDED
(HONORABLE ROBERT D. MARIANI)

NO. 3:22-CV-00125-RDM

**MOTION OF DEFENDANTS CITY OF WILKES-BARRE, POLICE OFFICER
TWERDY AND POLICE OFFICER JOHN DOE TO DISMISS PLAINTIFF'S
COMPLAINT**

Defendants, City of Wilkes-Barre, Police Officer Twerdy and Police Officer John Doe, by and through their undersigned counsel, Scanlon, Howley & Doherty, P.C., hereby move, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's Complaint as follows:

1. Plaintiff, Angela Velazquez, initiated this lawsuit on or about January 24, 2022.
(Complaint, ECF Doc. 1).

2. The Complaint names the City of Wilkes-Barre, Police Officer Twerdy, Police Officer John Doe, Unique L. Jones, Terdell Wees and Pennsylvania Financial Responsibility Assigned Claims Plan as the named Defendants. (ECF Doc. 1).
3. The City of Wilkes-Barre, Police Officer Twerdy and Police Officer John Doe seek dismissal of all claims against them as a matter of law.
4. The Complaint alleges that on February 10, 2021, Plaintiff was injured as a pedestrian when she was struck by a vehicle owned by Defendant Wees and operated by Defendant Jones that was being pursued by police officers in police pursuit including Defendant Officer Twerdy and Defendant Officer John Doe and other unnamed officers. (ECF Doc. 1, ¶¶8-11).
5. Plaintiff, Angela Velazquez, who was a bystander and not part of the police pursuit, claims that Police Officer Twerdy and/or Officer John Doe violated her substantive due process rights guaranteed by the Fourteenth Amendment of the United States Constitution under a 42 U.S.C. §1983 state-created danger theory by engaging in a high speed pursuit prior to Defendant Jones striking Ms. Velazquez. Plaintiff also asserts a state law negligence claim against Defendant City of Wilkes-Barre, Police Officer Twerdy and Police Officer John Doe for causing Plaintiff's injuries by negligently and

improperly initiating and maintaining a high speed police pursuit of Defendant Jones. (ECF Doc. 1, Counts I and IV).

6. For the reasons set forth in Defendants' Brief to be filed in accordance with Middle District of Pennsylvania Local Rule 7.5, the Complaint fails to state a claim against Police Officer Twerdy and Police Officer John Doe under which relief may be granted pursuant to a 42 U.S.C. §1983 state-created danger theory because (1) Plaintiff has not set forth a viable due process violation to establish any constitutional injury; and (2) Plaintiff's conclusory allegations are inaccurately pled and insufficient to establish a state-created danger.
7. Further, Police Officer Twerdy and Police Officer John Doe are entitled to qualified immunity as to Plaintiff's federal civil rights claims asserted.
8. The City of Wilkes-Barre, Police Officer Twerdy and Police Officer John Doe move this Honorable Court to enter an Order dismissing Count IV of the Complaint with prejudice pursuant to Rule 12(b)(6). Defendants further move the Court to decline to exercise supplemental jurisdiction over the state law claim against them present in Count I of the Complaint, so that the state law claim might be transferred to the Court of Common Pleas of Luzerne County, which is the state court of appropriate

jurisdiction and venue in accordance with Pennsylvania Rule of Civil Procedure 2103(b).

WHEREFORE, Defendants, The City of Wilkes-Barre, Police Officer Twerdy and Police Officer John Doe, respectfully request that this Honorable Court grant their Motion to Dismiss and enter an Order in accordance with the proposed Order filed contemporaneously herein.

SCANLON, HOWLEY & DOHERTY, P.C.

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CERTIFICATE OF COMPLIANCE

I, James A. Doherty, Jr., Esquire, hereby certify that the filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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